THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 11477 of 2007

O r d e r:

The petitioner is working as Driver with the respondents-APSRTC. While so, vide orders dated 30.03.2007, the 2nd respondent placed the petitioner under suspension, pending enquiry into the following charges:

1. For having involved in a rape case with a minor girl aged 14 years named Kum. Lakavath Kavitha D/o Ramulu R/o Machareddy at Chandrunaik thanda at about 19.30 hours on 04.12.06 duly consuming beer and alcohol by you and to the minor girl duly maimed her to proceed to school just adjacent to the Yellamma temple and raped the minor girl with intoxicated condition, which constitutes misconduct under Reggulations 26 and 28(xv) & (xxii) of APSRTC Employees (Conduct) Regulations, 1963.
2. For your failure to inform your immediate superior in regard to your arrest by the police of Machareddy for having raped a minor girl on 04.12.2006, which constitutes misconduct under Regulation 26 of APSRTC Employees (Conduct) Regulations, 1963
3. For having produced bogus sick certificate for theperiod from 08.12.2006 to 07.01.2007 from a Government Medical Officer, Sircilla (O.P. No. 10326, dated 09.12.2006, 27.12.2006 and O.P. No. 10376, dated 08.01.2007 by concealing the facts of your arrest by the police during the said period, which constitutes misconduct under Regulation 28(xxii) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

Assailing the aforesaid order of suspension and chargesheet, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that there are family disputes between the petitioner and the complainant. So as to take revenge, the complainant had lodged a criminal complaint against the petitioner for the offence of rape of his daughter under Section 376 IPC on the file of Machireddy Police Station, Nizamabad. Based on the said complaint, the police registered an F.I.R. No. 376 IPC, dated 05.12.2006, and after investigation filed charge sheet. He submitted

that since the police have already registered a case and filed charge sheet in respect of the offence of rape, and since the same is pending trial, it is not proper for the respondents to initiate disciplinary proceedings against him into the self-same charges, and more so when the witnesses to be examined in the criminal case and the departmental enquiry are one and the same. He submitted that if the departmental enquiry is allowed to go on, serious prejudice would be caused to the petitioner in the criminal case, and as such, prayed that till the conclusion of the criminal case, the departmental proceedings be stayed, and in support of this argument, he placed reliance on the judgments of a learned single Judge of this Court in **Y.S. Vidya Sagar v. Deputy General Manager, SBI**[1] and **A. Peddanna v. Divisional Security Commissioner, Railway Protection Force**[2].

On the other hand, the learned Standing Counsel for the respondents-APSRTC submitted that the charges framed against the petitioner in the departmental enquiry are entirely different and distinct from the charges framed against him in the criminal case, and as such, it is not a case where the departmental proceedings can be stayed until the conclusion of the criminal case. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

It is the contention of the petitioner that inasmuch as a criminal case is pending against him in respect of the very same charges on which the departmental enquiry is sought to be initiated, the departmental proceedings have to be stayed until conclusion of the criminal case, else it would cause prejudice to him in the criminal case for the witnesses in the departmental enquiry and the criminal

proceedings are one and the same.

I am unable to agree with this submission of the petitioner. The law is well settled that approach and object of criminal proceedings and departmental proceedings are entirely different and distinct, in the former, the accused would be tried for offences under IPC or other penal offences, while in the latter, the employee would be tried for violation of the service conditions of employment. The apex Court in ***Lalit Popli v. Canara Bank and others***[3] held that the criminal proceedings and departmental proceedings are entirely different and the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. The apex Court held as follows:

> "It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See **State of Rajasthan Vs. B.K. Meena**[4]) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

Further, the apex Court in **Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corpn. Ltd**[5]**,** held that the two proceedings, criminal and departmental, are entirely different and they operate in different fields and have different objectives. The apex Court held as follows:

> "…….The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability"……"

So from the above, it is clear that the criminal proceedings and departmental proceedings are different and distinct. Though the petitioner contends that the charges framed against him in the criminal case and the departmental proceedings are one and the same, the fact remains, in the criminal case, the petitioner has been charged for the offence punishable under Section 376 IPC, while in the departmental proceedings, a reading of the impugned charge sheet would disclose that he has been charged for the acts of misconduct under the APSRTC Employees (Conduct) Regulations, in that he is said to have in a drunken condition raped a minor girl, failed to inform about his arrest by the police in connection with said offence under IPC, and that he produced bogus sick certificate for the period he was under remand in connection with the offence under IPC. Thus, it is clear that the charges framed against the petitioner in the criminal case and the departmental proceedings are not one and the same, but distinct and

different with each other. In that view of the matter, reliance placed by the counsel for the petitioner on the judgments of a learned Judge of this Court in **Y.S. Vidya Sagar v. Deputy General Manager, SBI** and **A. Peddanna v. Divisional Security Commissioner, Railway Protection Force,** are of no assistance to him, for the reason that in the said cases, the departmental proceedings were initiated not in connection with violation of any act of misconduct under the service regulations, but in connection with the penal offences registered against the employee, which were subject matter of trial. Hence, it is not a fit case, where the departmental proceedings can be stayed till the conclusion of the criminal case.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 20th July, 2007.
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[1] 2006 LAB.I.C. 1354
[2] 2006 LLR 722
[3] 2003 (3) SCC 583
[4] (1996) 6 SCC 417 1996 SCC (L&S) 1455
[5] (2005) 7 SCC 764